

Calendar No. 35

103D CONGRESS
1ST SESSION

S. 336

[Report No. 103-21]

A BILL

To amend the Stock Raising Homestead Act to re-
solve certain problems regarding subsurface es-
tates, and for other purposes.

MARCH 17 (legislative day, MARCH 3), 1993

Reported without amendment

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[Report No. 103-21]

To amend the Stock Raising Homestead Act to resolve certain problems regarding subsurface estates, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 5), 1993

Mr. BINGAMAN introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

MARCH 17 (legislative day, MARCH 3), 1993

Reported by Mr. JOHNSTON, without amendment

A BILL

To amend the Stock Raising Homestead Act to resolve certain problems regarding subsurface estates, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. MINING CLAIMS ON STOCK RAISING HOME-**
4 **STEAD ACT LANDS.**

5 (a) MINERAL ENTRY UNDER THE STOCK RAISING
6 HOMESTEAD ACT.—Section 9 of the Act of December 29,

1 1916, entitled “An Act to provide for stock-raising home-
2 steads, and for other purposes” (43 U.S.C. 299), is
3 amended by adding the following at the end thereof:

4 “(b) EXPLORATION; LOCATION OF MINING CLAIMS;
5 NOTICES.—

6 “(1) IN GENERAL.—(A) Notwithstanding sub-
7 section (a) and any other provision of law to the
8 contrary, after the effective date of this subsection
9 no person other than the surface owner may enter
10 lands subject to this Act to explore for, or to locate,
11 a mining claim on such lands without—

12 “(i) filing a notice of intention to locate a
13 mining claim pursuant to paragraph (2); and

14 “(ii) providing notice to the surface owner
15 pursuant to paragraph (3).

16 “(B) Any person who has complied with the re-
17 quirements referred to in subparagraph (A) may,
18 during the authorized exploration period, in order to
19 locate a mining claim, enter lands subject to this Act
20 to undertake mineral activities related to exploration
21 that cause no more than a minimal disturbance of
22 surface resources and do not involve the use of
23 mechanized earthmoving equipment, explosives, the
24 construction of roads, drill pads, or the use of toxic
25 or hazardous materials.

1 “(C) The authorized exploration period referred
2 to in subparagraph (B) shall begin 30 days after no-
3 tice is provided under paragraph (3) with respect to
4 lands subject to such notice and shall end with the
5 expiration of the 90-day period referred to in para-
6 graph (2)(A) or any extension provided under para-
7 graph (2).

8 “(2) NOTICE OF INTENTION TO LOCATE A MIN-
9 ING CLAIM.—Any person seeking to locate a mining
10 claim on lands subject to this Act in order to engage
11 in the mineral activities relating to exploration re-
12 ferred to under paragraph (1)(B) shall file with the
13 Secretary of the Interior a notice of intention to lo-
14 cate a claim on the lands concerned. The notice shall
15 be in such form as the Secretary shall prescribe. The
16 notice shall contain the name and mailing address of
17 the person filing the notice and a legal description
18 of the lands to which the notice applies. The legal
19 description shall be based on the public land survey
20 or on such other description as is sufficient to per-
21 mit the Secretary to record the notice on the land
22 status records of the Secretary. Whenever any per-
23 son has filed a notice under this paragraph with re-
24 spect to any lands, during the 90-day period follow-
25 ing the date of such filing, or any extension thereof

1 pursuant to this paragraph, no other person (includ-
2 ing the surface owner) may—

3 “(A) file such a notice with respect to any
4 portions of such lands;

5 “(B) explore for minerals or locate a min-
6 ing claim on any portion of such lands; or

7 “(C) file an application to acquire any in-
8 terest in any portion of such lands pursuant to
9 section 209 of the Federal Land Policy and
10 Management Act of 1976 (43 U.S.C. 1719).

11 If, within such 90-day period, the person who filed
12 a notice under this paragraph files a plan of oper-
13 ations with the Secretary pursuant to subsection (f),
14 such 90-day period shall be extended until the ap-
15 proval or disapproval of the plan by the Secretary
16 pursuant to subsection (f).

17 “(3) NOTICE TO SURFACE OWNER.—Any per-
18 son who has filed a notice of intention to locate a
19 mining claim under paragraph (2) for any lands sub-
20 ject to this Act shall provide written notice of such
21 filing, by registered or certified mail with return re-
22 ceipt, to the surface owner (as evidenced by local tax
23 records) of the lands covered by the notice under
24 paragraph (2). The notice shall be provided at least

1 30 days before entering such lands and shall contain
2 each of the following:

3 “(A) A brief description of the proposed
4 mineral activities.

5 “(B) A map and legal description of the
6 lands to be subject to mineral exploration.

7 “(C) The name, address and phone num-
8 ber of the person managing such activities.

9 “(D) A statement of the dates on which
10 such activities, will take place.

11 “(4) ACREAGE LIMITATIONS.—The total acre-
12 age covered at any time by notices of intention to lo-
13 cate a mining claim under paragraph (2) filed by
14 any person and by affiliates of such person may not
15 exceed 6,400 acres of lands subject to this Act in
16 any one State and 1,280 acres of such lands for a
17 single surface owner.

18 For purposes of this paragraph, the term ‘affiliate’ means,
19 with respect to any person, any other person which con-
20 trols, is controlled by, or is under common control with,
21 such person.

22 “(c) CONSENT.—Notwithstanding subsection (a) and
23 any other provision of law, after the effective date of this
24 subsection no person may engage in the conduct of min-
25 eral activities (other than those relating to exploration re-

1 ferred to in subsection (b)(1)(B)) on a mining claim lo-
2 cated on lands subject to this Act without the written con-
3 sent of the surface owner thereof unless the Secretary has
4 authorized the conduct of such activities under subsection
5 (d).

6 “(d) AUTHORIZED MINERAL ACTIVITIES.—The Sec-
7 retary shall authorize a person to conduct mineral activi-
8 ties (other than those relating to exploration referred to
9 in subsection (b)(1)(B)) on lands subject to this Act with-
10 out the consent of the surface owner thereof if such person
11 complies with the requirements of subsections (e) and (f).

12 “(e) BOND.—(1) Before the Secretary may authorize
13 any person to conduct mineral activities the Secretary
14 shall require such person to post a bond or other financial
15 guarantee in an amount to insure the completion of rec-
16 lamation pursuant to this Act. Such bond or other finan-
17 cial guarantee shall ensure—

18 “(A) payment to the surface owner, after the
19 completion of such mineral activities and reclama-
20 tion, compensation for any permanent damages to
21 crops and tangible improvements of the surface
22 owner that resulted from mineral activities; and

23 “(B) payment to the surface owner of com-
24 pensation for any permanent loss of income of the
25 surface owner due to loss or impairment of grazing,

1 or other uses of the land by the surface owner to the
2 extent that reclamation required by the plan of oper-
3 ations would not permit such uses to continue at the
4 level existing prior to the commencement of mineral
5 activities.

6 “(2) In determining the bond amount to cover perma-
7 nent loss of income under paragraph (1)(B), the Secretary
8 shall consider, where appropriate, the potential loss of
9 value due to the estimated permanent reduction in utiliza-
10 tion of the land.

11 “(f) PLAN OR OPERATIONS.—(1) Before the Sec-
12 retary may authorize any person to conduct mineral activi-
13 ties on lands subject to this Act, the Secretary shall re-
14 quire such person to submit a plan of operations. Such
15 plan shall include procedures for—

16 “(A) the minimization of damages to crops and
17 tangible improvements of the surface owner;

18 “(B) the minimization of disruption to grazing
19 or other uses of the land by the surface owner; and

20 “(C) payment of a fee for the use of surface
21 during mineral activities equivalent to the loss of in-
22 come to the ranch operation as established pursuant
23 to subsection (g).

24 “(2) The Secretary shall provide a copy of the pro-
25 posed plan of operations to the surface owner at least 45

1 days prior to the date the Secretary makes a determina-
2 tion as to whether such plan complies with the require-
3 ments of this subsection. During such 45-day period the
4 surface owner may submit comments and recommend
5 modifications to the proposed plan of operations to the
6 Secretary.

7 “(3)(A) The Secretary shall, within 60 days of receipt
8 of the plan, approve the plan of operations if it complies
9 with the requirements of this Act, including each of the
10 following:

11 “(i) The proposed plan of operations is com-
12 plete and accurate.

13 “(ii) The persons submitting the proposed plan
14 of operations has demonstrated that all other appli-
15 cable Federal and State requirements have been
16 met.

17 “(B) The Secretary shall notify the person submit-
18 ting a plan of operations of any modifications to such plan
19 required to bring it into compliance with the requirements
20 of this Act. If the person submitting the plan agrees to
21 modify such plan in a manner acceptable to the Secretary,
22 the Secretary shall approve the plan as modified. In the
23 event no agreement can be reached on the modifications
24 to the plan which, in the opinion of the Secretary, will
25 bring such plan into compliance with the requirements of

1 this Act, then the Secretary shall disapprove the plan and
2 notify both the surface owner and the person submitting
3 the plan of the decision.

4 “(C) The 60-day period referred to in subparagraph
5 (A) may be extended by the Secretary where additional
6 time is required to comply with other applicable require-
7 ments of law.

8 “(D) The Secretary shall suspend or revoke a plan
9 of operation whenever the Secretary determines, on the
10 Secretary’s own motion or on a motion made by the sur-
11 face owner, that the person conducting mineral activities
12 is in substantial noncompliance with the terms and condi-
13 tions of an approved plan of operations and has failed to
14 remedy a violation after notice from the Secretary within
15 the time required by the Secretary.

16 “(4) Final approval of a plan of operations under this
17 subsection shall be conditioned upon compliance with sub-
18 sections (e) and (g).

19 “(g) FEE.—The fee referred to in subsection (f)(1)
20 shall be—

21 “(1) paid to the surface owner by the person
22 submitting the plan of operations;

23 “(2) paid in advance of any mineral activities or
24 at such other time or times as may be agreed to by

1 the surface owner and the person conducting such
2 activities; and

3 “(3) established by the Secretary taking into
4 account the acreage involved and the degree of po-
5 tential disruption to existing surface uses during
6 mineral activities (including the loss of income to the
7 surface owner and such surface owner’s operations
8 due to the loss or impairment of existing surface
9 uses for the duration of the mineral activities), ex-
10 cept that such fee shall not exceed the fair market
11 value for the surface of the land.

12 “(h) RECLAMATION.—Lands affected by mineral ac-
13 tivities under a plan of operations approved pursuant to
14 subsection (f)(3) shall be reclaimed, to the maximum ex-
15 tent practicable, to a condition capable of supporting the
16 uses to which such lands were capable of supporting prior
17 to surface disturbance. Reclamation shall proceed as con-
18 temporaneously as practicable with the conduct of mineral
19 activities.

20 “(i) STATE LAW.—(1) Nothing in this Act shall be
21 construed as affecting any reclamation, bonding, inspec-
22 tion, enforcement, air or water quality standard or re-
23 quirement of any State law or regulation which may be
24 applicable to mineral activities on lands subject to this Act

1 to the extent that such law or regulation is not inconsis-
2 ent with this title.

3 “(2) Nothing in this Act shall be construed as affect-
4 ing in any way the right of any person to enforce or pro-
5 tect, under applicable law, the interest of such person in
6 water resources affected by mineral activities.

7 “(j) INSPECTIONS.—Should any surface owner of
8 land subject to this Act have reason to believe that they
9 are or may be adversely affected by mineral activities due
10 to any violation of the terms and conditions of a plan of
11 operations approved under subsection (f), such surface
12 owner may request an inspection of such lands.

13 “The Secretary shall determine within 10 days of the
14 receipt of the request whether the request states a reason
15 to believe that a violation exists, except in the event the
16 surface owner alleges and provides reason to believe that
17 an imminent danger exists, the 10-day period shall be
18 waived and the inspection conducted immediately. When
19 an inspection is conducted under this paragraph, the Sec-
20 retary shall notify the surface owner and such surface
21 owner shall be allowed to accompany the inspector on the
22 inspection.

23 “(k) DAMAGES FOR FAILURE TO COMPLY.—(1)
24 Whenever the surface owner of any land subject to this
25 Act has suffered any permanent damages to crops or tan-

1 gible improvements of the surface owner, or any perma-
2 nent loss of income due to loss or impairment of grazing,
3 or other uses of the land by the surface owner, if such
4 damages or loss result from—

5 “(A) any mineral activity undertaken without
6 the consent of the surface owner under subsection
7 (c) or an authorization by the Secretary under sub-
8 section (d); or

9 “(B) the failure of the person conducting min-
10 eral activities to remedy to the satisfaction of the
11 Secretary any substantial noncompliance with the
12 terms and conditions of a plan under subsection (f);
13 the surface owner may bring an action in the appropriate
14 United States district court for, and the court may award,
15 double damages plus costs for willful misconduct or gross
16 negligence.

17 “(2) The surface owner of any land subject to this
18 Act may also bring an action in the appropriate United
19 States district court for double damages plus costs for
20 willful misconduct or gross negligence against any person
21 undertaking any mineral activities on lands subject to this
22 Act in violation of any requirement of subsection (b).

23 “(3) Any double damages plus costs awarded by the
24 court under this subsection shall be reduced by the
25 amount of any compensation which the surface owner has

1 received (or is eligible to receive) pursuant to the bond
2 or financial guarantee required under subsection (e).

3 “(l) PAYMENT OF FINANCIAL GUARANTEE.—The
4 surface owner of any land subject to this Act may petition
5 the Secretary for payment of all or any portion of a bond
6 or other financial guarantee required under subsection (e)
7 as compensation for any permanent damages to crops and
8 tangible improvements of the surface owner, or any per-
9 manent loss of income due to loss or impairment of graz-
10 ing, or other uses of the land by the surface owner. Pursu-
11 ant to such a petition, the Secretary may use such bond
12 or other guarantee to provide compensation to the surface
13 owner for such damages and to insure the required rec-
14 lamation.

15 “(m) BOND RELEASE.—The Secretary shall release
16 the bond or other financial guarantee required under sub-
17 section (e) upon the successful completion of all require-
18 ments pursuant to a plan of operations approved under
19 subsection (f).

20 “(n) CONVEYANCE TO SURFACE OWNER.—The Sec-
21 retary shall take such actions as may be necessary to sim-
22 plify the procedures which must be complied with by sur-
23 face owners of lands subject to this Act who apply to the
24 Secretary to obtain title to interests in such lands owned
25 by the United States.

1 “(o) DEFINITIONS.—For the purposes of subsections
2 (b) through (n)—

3 “(1) The term ‘mineral activities’ means any
4 activity for, related to or incidental to mineral explo-
5 ration, mining, and beneficiation activities for any
6 locatable mineral on a mining claim. When used
7 with respect to this term—

8 “(A) the term ‘exploration’ means those
9 techniques employed to locate the presence of a
10 locatable mineral deposit and to establish its
11 nature, position, size, shape, grade and value;

12 “(B) the term ‘mining’ means the proc-
13 esses employed for the extraction of a locatable
14 mineral from the earth; and

15 “(C) the term ‘beneficiation’ means the
16 crushing and grinding of locatable mineral ore
17 and such processes are employed to free the
18 mineral from the other constituents, including
19 but no necessarily limited to, physical and
20 chemical separation techniques.

21 “(2) The term ‘mining claim’ means a claim lo-
22 cated under the general mining laws of the United
23 States (which generally comprise 30 U.S.C. chapters
24 2, 12A, and 16, and sections 161 and 162) subject

1 to the terms and conditions of subsections (b)
2 through (p) of this section.

3 “(3) The term ‘tangible improvements’ includes
4 agricultural, residential and commercial improve-
5 ments, including improvements made by residential
6 subdividers.

7 “(p) MINERALS COVERED.—Subsections (b) through
8 (o) of this section apply only to minerals not subject to
9 disposition under—

10 “(1) the Mineral Leasing Act (30 U.S.C. 181
11 and following);

12 “(2) the Geothermal Steam Act of 1970 (30
13 U.S.C. 100 and following); or

14 “(3) the Act of July 31, 1947, commonly
15 known as the Materials Act of 1947 (30 U.S.C. 601
16 and following).”.

17 (b) TECHNICAL CONFORMING AMENDMENT.—Sec-
18 tion 9 of the Act of December 29, 1916, entitled “An Act
19 to provide for stock-raising homesteads, and for other pur-
20 poses” (43 U.S.C. 299) is amended by inserting “(a) GEN-
21 ERAL PROVISIONS.—” before the words “That all entries
22 made”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this Act shall take effect 180 days after the date of enact-
25 ment.

1 (d) REGULATIONS.—The Secretary of the Interior
2 shall issue final regulations to implement the amendments
3 made by this Act not later than the effective date of this
4 Act. Failure to promulgate these regulations by reason of
5 any appeal or judicial review shall not delay the effective
6 date as specified in paragraph (c).

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